

TERMS AND CONDITIONS OF SALE

Please note that these Terms and Conditions are for UK use only.

These Terms and Conditions should not be used for NHS Supply Chain Orders and/or Custom-Made Devices

The customer's attention is drawn in particular to the provisions of Error! Bookmark not defined.13.

1. Interpretation

1.1 Definitions:

Adverse Event(s) means any adverse event associated with the use of the Products in humans where such adverse event is wholly or in part attributable to the Products, whether or not considered Products related, including but not limited to (i) an adverse event occurring in the course of the use of the Products; and (ii) an adverse event occurring from failure of the Products.

Business Day: a day other than a Saturday, Sunday or public holiday in Scotland, when banks in Glasgow are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time.

Contract: the contract between Terumo Aortic and the Customer for the sale and purchase of the Products in accordance with the Order and these Conditions.

Customer: means the customer purchasing the Products from Terumo Aortic in accordance with the Order.

Delivery Location: has the meaning given in clause 4.2.

Data Protection Legislation means all privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation, and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

EXW: has the meaning of Ex-Works as defined in the ACP listing Incoterms® 2020.

Force Majeure Event: means any circumstance not within Terumo Aortic's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;

(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

(d) nuclear, chemical or biological contamination or sonic boom;

(e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

(f) collapse of buildings, fire, explosion or accident;

(g) any labour or trade dispute, strikes, industrial action or lockouts;

(h) non-performance or delay by third party suppliers, contractors or subcontractors;

(i) interruption or failure of utility service; or

(j) any other circumstance outwith the control of Terumo Aortic.

Good Manufacturing Practice(s): means all applicable directives and regulations in relation to good manufacturing practices in respect of medical devices including but not limited to Directive 93/42/EEC (Medical Device Directive).

Implanted Device(s): means any medical device that is (a) manufactured by or for the Customer; and (b) contains one or more of the Products; and (c) is designed to be permanently or temporarily implanted in the human body.

Instructions for Use: means the instructions provided by Terumo Aortic for the use and maintenance of the product as set out on the box, label or otherwise attached to the product, or made available in digital format.

Intellectual Property Rights: means patents, utility models, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights on computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

List Price: means the price as detailed in the standard pricing list of Terumo Aortic, which can be made available on request.

Order: the Customer's order for the Products and subject always to these Conditions.

Party: means a party to this Contract, collectively referred to as the "**Parties**".

Payment Terms: means the payment terms of the Products as set out in these Conditions.

Purchase Price: means the purchase price of the Products as set out in the order confirmation or pricing agreement. Where there is no applicable order confirmation or pricing agreement, the Purchase Price shall reflect the List Price.

Products: the products (or any part of them) set out in the Order.

Product Registration: means the approvals or registrations for any of the Products which have been or are required to purchase the Products.

Regulatory Approval: means the technical, medical and scientific licenses, registrations, authorisations, certifications and approvals of any national, supra-national, regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity, necessary for the commercial manufacture, distribution, marketing, promotion, offer for sale, use, import, export and sale of medical device products (of the nature anticipated under this Contract) in a regulatory jurisdiction in the Territory.

Storage Instructions: means the storage instructions relating to the Products as set out in the Instructions for Use. The Products must be stored in under conditions which shall preserve the Product and not result in any deterioration, whether to the packaging or its contents.

Territory: means and includes all countries in the world in which Regulatory Approval of the Products is being sought and/or has been received.

Terumo Aortic: means Vascutek Limited, trading as Terumo Aortic, incorporated in Scotland under the Companies Acts (no. SC079773) and having its registered office at Newmains Avenue, Inchinnan, Renfrewshire PA4 9RR, UK.

1.2

Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a Party includes its personal representatives, successors and permitted assigns.
- (a) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Products in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when Terumo Aortic accepts the Order, at which point the Contract shall come into existence.
- 2.4 The Customer hereby waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by Terumo Aortic and any descriptions or illustrations contained in Terumo Aortic's catalogues, websites and brochures are produced for the sole purpose of giving an approximate idea of the Products referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Products given by Terumo Aortic shall not constitute an offer; and any quotation shall only valid

for a period of 20 Business Days from the date of its issue.

3. Products

- 3.1 The Products are described in the Order
- 3.2 Terumo Aortic reserves the right to amend or cancel the Order (without penalty or liability) if required by any applicable statutory or regulatory requirement (including but not limited to a Product Recall), and Terumo Aortic shall notify the Customer in any such event.

4. Delivery

- 4.1 Terumo Aortic shall ensure that if Terumo Aortic requires the Customer to return any packaging materials to Terumo Aortic, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Terumo Aortic shall reasonably request. Returns of packaging materials shall be at Terumo Aortic's expense.
- 4.2 Terumo Aortic shall deliver the Products, at the Customer's sole cost and expense, EXW to the delivery location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after Terumo Aortic notifies the Customer that the Products are ready, or at a specific time agreed in writing by both Parties.
- 4.3 Subject to clause 4.6 and 4.7, delivery is completed on the completion of unloading of the Products at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Terumo Aortic shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide Terumo Aortic with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

4.5 If Terumo Aortic fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Products of similar description and quality in the cheapest market available, less the price of the Products. Terumo Aortic shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Terumo Aortic with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

4.6 Subject to clause 4.7, If the Customer fails to take delivery of the Products within 3 Business Days of Terumo Aortic notifying the Customer that the Products are ready, then, except where such failure or delay is caused by a Force Majeure Event or Terumo Aortic's failure to comply with its obligations under the Contract in respect of the Products:

- (a) delivery of the Products shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Terumo Aortic

notified the Customer that the Products were ready; and

- (b) Terumo Aortic shall store the Products until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 If t10 Business Days after the day on which Terumo Aortic notified the Customer that the Products were ready for delivery the Customer has not taken or accepted actual delivery of them, Terumo Aortic may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Products or charge the Customer for any shortfall below the price of the Products.

4.8 If Terumo Aortic delivers up to and including 5% more or less than the quantity of Products stated in the Order the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Products was delivered, Terumo Aortic shall make a pro rata adjustment to the invoice for the Products.

5. Quality

5.1 Terumo Aortic guarantees that, subject to the payment of the Purchase Price, on delivery, the Products shall:

- (a) conform with the product number and product description in the Order;

- (b) be free from material defects in design, material and workmanship; and
- (c) be fit for any purpose held out by Terumo Aortic.

5.2 Subject to clause 5.3:

5.2.1 in the case of a defect that is apparent on normal visual inspection, if the Customer gives notice in writing to Terumo Aortic within 2 Business Days of delivery; or

5.2.2 in the case of a latent defect, if the Customer gives notice in writing to Terumo Aortic within two 2 Business Days from when the latent defect became apparent,

Terumo Aortic shall, at its sole discretion, repair or replace the defective Products, or either issue a credit note or refund the price of the defective Products in full, subject to the following conditions:

- (a) Terumo Aortic having a reasonable opportunity of examining such Products; and
- (b) the Customer (if asked to do so by Terumo Aortic) returning such Products to Vascutek at the Customer's cost.

5.3 Terumo Aortic shall not be liable for the Products' failure to comply with the guarantees set out in clause 5.1 if:

- (a) the Customer makes any further use of such Products after giving notice in accordance with clause 5.1(c);
- (b) the defect arises because the Customer failed to follow Terumo Aortic's Storage Instructions and Instructions for Use of the Products;
- (c) the defect arises as a result of Terumo Aortic following any drawing, design or specification supplied by the Customer and agreed to in writing by Terumo Aortic;
- (d) the Customer alters such Products without the written consent of Terumo Aortic;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or.
- (f) the Products have been used as a component in a Implant Device or for a purpose not notified to Terumo Aortic in advance of or at the time of the Order.

5.4 Except as provided in this clause 5, Terumo Aortic shall have no liability to the Customer in respect of the Product's failure to comply with the guaranties set out in clause 5.1.

5.5 These Conditions shall apply to any repaired or replacement Products supplied by Terumo Aortic.

6. Title and risk

6.1 Unless otherwise agreed in writing, the risk in the Products shall pass to the Customer on the Products leaving the premises of Terumo Aortic.

6.2 Title to the Products shall not pass to the Customer until Terumo Aortic receives the Purchase Price in full (in cleared funds) in which case title shall pass at the time of payment of all such sums.

6.3 Until title to the Products has passed to the Customer, the Customer shall:

- (a) store the Products separately from all other products held by the Customer so that they remain readily identifiable as Terumo Aortic's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify Terumo Aortic immediately if it becomes subject to any of the events listed in clause 18.1(b) to clause 18.1(d); and
- (e) give Terumo Aortic such information as Terumo Aortic may reasonably require from time to time relating to:
 - (i) the Products; and

- (ii) the ongoing financial position of the Customer.

7. Price and terms of payment

7.1 The price of the Products shall be the Purchase Price and the Customer shall pay the Purchase Price.

7.2 The price of the Products:

- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to Terumo Aortic at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) unless otherwise agreed in writing, includes the costs and charges of packaging and insurance of the Products, which shall be invoiced to the Customer. All transportation costs shall be borne by the Customer.

7.3 Terumo Aortic may, by giving notice to the Customer at any time before delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to:

- (a) any factor beyond Terumo Aortic's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

- (b) any request by the Customer to change the delivery date(s), quantities or types of Products ordered; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give Terumo Aortic adequate or accurate information or instructions.

7.4 Terumo Aortic shall be entitled to invoice the Customer for the Products on or at any time after the completion of delivery.

7.5 The Customer shall pay each invoice submitted by Terumo Aortic in full and cleared funds within 30 Business Days on receipt of the invoice and time for payment shall be of the essence of the Contract. Payment shall be made to the bank account nominated in writing by Terumo Aortic.

7.6 Terumo Aortic reserves the right to amend its List Price at any time.

7.7 If the Customer fails to make a payment due to Terumo Aortic under the Contract by the due date, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the Bank of Scotland's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

7.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding

(other than any deduction or withholding of tax as required by law).

8. Customer's Obligations

8.1 The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) pay for the Products in accordance with the Payment Terms;
- (c) co-operate with Terumo Aortic in all matters relating to the supply of the Products;
- (d) comply with the Storage Instructions;
- (e) comply with the Instructions for Use;
- (f) provide Terumo Aortic with such information and materials as Terumo Aortic may require to supply the Products, and ensure that such information is accurate in all material respects;
- (g) obtain and maintain all necessary licences, permissions and consents which may be required under this Contract; and
- (h) keep and maintain all materials, equipment, documents and other property of Terumo Aortic ("**Terumo Aortic Materials**") at the Customer's premises in safe custody at its own risk, maintain Terumo Aortic Materials in good condition

until returned to Terumo Aortic, and not dispose of or use Terumo Aortic Materials other than in accordance with Terumo Aortic's written instructions or authorisation.

8.2 If Terumo Aortic's performance of any of its obligations under this Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) Terumo Aortic shall without limiting its other rights or remedies have the right to suspend performance of their obligations under this Contract until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Terumo Aortic's performance of any of its obligations;
- (b) Terumo Aortic shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Terumo Aortic's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse Terumo Aortic on written demand for any costs or losses sustained or incurred by Terumo Aortic arising directly

or indirectly from the Customer Default.

9. Adverse Effects

9.1 The Customer shall maintain Adverse Event files for the Products, in accordance with Good Manufacturing Practices.

9.2 The Customer shall provide Terumo Aortic with copies of relevant Adverse Event reports relating to the Products within one (1) Business Day of receipt.

9.3 The Customer shall have responsibility for responding to all Adverse Events for the Products, and for promptly providing Terumo Aortic with a copy of any responses to such Adverse Events relating to the Products.

9.4 The Customer shall follow up and investigate customer reports of any Adverse Events related to the Products, and keep Terumo Aortic informed, as appropriate, as to the nature, status and resolution of such Adverse Events on a timely basis with sufficient information provided to Terumo Aortic to investigate such Adverse Events.

10. Product Recall

10.1 Where the Customer or Terumo Aortic obtains information that any of the Products do not conform to the labelling or the Product Registration for the Products in the Territory, it shall notify the other Party immediately and both Parties shall cooperate fully regarding the investigation and any outcomes of any such matter.

10.2 The Customer shall maintain appropriate, up-to-date and accurate records to enable the immediate recall of any Products. These records shall include records of deliveries to customers (including batch numbers, delivery dates, names and addresses of customers, telephone numbers, fax numbers and e-mail addresses).

10.3 In the event that:

10.3.1 any applicable regulatory authority should issue a request, directive or order that any of the Products be recalled; or

10.3.2 a court of competent jurisdiction orders such a recall;

(any and all event a "**Recall**"), each Party shall give notice as soon as reasonably practicable by whatever means within one (1) Business Day and to be confirmed in writing within three (3) Business Days of the event described in 10.3.1 or 10.3.2.

10.4 The Customer shall not, unless required by law, undertake any recall or withdrawal without the written permission of Terumo Aortic and in such case, the Customer shall comply with Terumo Aortic's instructions.

10.5 The Customer shall have sole responsibility for determining all Corrective Actions to be taken and to implement the Recall in the Territory but shall confer with Terumo Aortic and keep Terumo Aortic informed on a regular basis of the Customer's progress in planning and implementing the Recall.

10.6 Terumo Aortic shall provide to the Customer replacement products for the number of recalled Products (such number to be evidenced by the Customer), or in the alternative issue a credit note at Terumo Aortic's sole expense where such failure relates to the Products, except to the extent that such Recall is attributable to any negligence on the part of Customer or any material breach by Customer of its obligations under this Contract.

11. Insurance

Terumo Aortic has in place the following insurance policies:

(a) public liability insurance with a limit of at least £1 million GBP per claim; and

(b) product liability insurance with a limit of at least £1 million GBP for claims arising from a single event or series of related events in a single calendar year.

12. Indemnification

12.1 The Customer shall indemnify Terumo Aortic against all liabilities, costs, expenses, damages and losses (but excluding indirect or consequential losses, loss of profit or opportunity, loss of reputation) suffered or incurred by Terumo Aortic arising out of or in connection with:

12.1.1 any breach of, or negligent performance, or non-performance of this Contract and / or the enforcement of this Contract; and

12.1.2 any claim made against Terumo Aortic by a third party for death, or personal injury arising out of or in connection with the Products, to the extent that the defect is not directly attributable to the acts or omissions of Terumo Aortic, its employees, agents or subcontractors.

12.2 Nothing in this clause shall restrict or limit either Party's general obligation in law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity.

13 Limitation of liability

13.1 Terumo Aortic has obtained insurance cover in respect of certain aspects its own legal liability for individual claims as set out in clause 13. The Customer is responsible for making its own arrangements for the insurance of any excess liability.

13.2 The restrictions on liability in this **Error! Bookmark not defined.**13 apply to every

liability arising under or in connection with the Contract including but not limited to liability in contract, delict (including negligence), misrepresentation, or otherwise.

13.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

13.3.1 death or personal injury caused by negligence;

13.3.2 fraud or fraudulent misrepresentation; or

13.3.3 any other liability that cannot be excluded or limited by applicable law.

13.4 Subject to **Error! Bookmark not defined.**13.3, Terumo Aortic's total liability to the Customer shall not exceed the Purchase Price paid to Terumo Aortic by the Customer under this Contract in relation to the Order under which such liability arises. In no event shall Terumo Aortic be liable for any damages arising from or in connection with the Customers use of the Products in another product or customisation of the Products.

13.5 Subject to **Error! Bookmark not defined.**13.3, Terumo Aortic shall not be liable to the Customer for any:

13.5.1 liquidated damages;

13.5.2 loss of profits;

13.5.3 loss of sales or business opportunities;

13.5.4 loss of agreements or contracts;

13.5.5 loss of anticipated savings;

13.5.6 loss of use or corruption of software, data or information;

13.5.7 loss of or damage to goodwill; or

13.5.8 loss of reputation; and

13.5.9 special, indirect or consequential loss, suffered by the Customer that arises under or in connection with this Contract.

13.6 This **Error! Bookmark not defined.** shall survive termination of the Contract.

14. Returns

14.1 In the event that the Customer wishes to return any of the Products purchased and receive a refund for the Purchase Price in full or part, the Customer must inform Terumo Aortic as soon as possible in writing but in any event no less than 30 Business Days after delivery of the Products in accordance with clause 4.3 (“Return Request”).

14.2 The Customer acknowledges and accepts that no Return Request will be accepted 30 Business Days after delivery of the Products in accordance with clause 4.3 and it will be at Terumo Aortic’s sole discretion as to whether the return will be accepted.

14.3 The Customer acknowledges and accepts that the Products will only be eligible for return if the following conditions are satisfied:

14.3.1 the Products have not been tampered with and are in their original packaging and fit for immediate re-sale; and

14.3.2 the packaging of the Products remains unbroken and in reasonable condition.

14.4 In the event that the return is accepted by Terumo Aortic:

14.3.1 arrangements for the return of the Products will be made separately between the Parties;

14.3.2 the Customer acknowledges and accepts that Terumo Aortic reserves the right to reduce the refund of the Purchase Price to reflect any reduction in the value of the Products;

14.3.3 if the Purchase Price is refunded in full or part before Terumo Aortic is able to inspect the Products and later discovers that the Products have been mishandled in any way or the Customer is in breach of the conditions under clause 14.3, the Customer must reimburse Terumo Aortic to reflect any reduction in the value of the Products;

14.3.4 the refund of the Purchase Price in full or part will be issued by Terumo Aortic as soon as reasonably possible.

15. Intellectual Property

15.1 The Customer acknowledges that all Intellectual Property Rights in the Products belong and shall belong to Terumo Aortic, and the Customer shall have no rights in or to the Products other than the right to purchase the Products in accordance with this Contract.

15.2 Subject to the limits set out herein, the Customer shall indemnify Terumo Aortic in full against any sums awarded by a court against Terumo Aortic arising out of or in connection with any claim brought against Terumo Aortic for infringement of a third Party’s rights (including any Intellectual Property

Rights) arising out of, or in connection with, the use of the Products by the Customer.

16. Compliance with Laws and Regulations

- 16.1 The Customer shall be responsible for:
- 11.1.1 obtaining any necessary import licences, permits or any authorisation necessary for the purchase of the Products;
 - 11.1.2 any custom duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Products;
 - 11.1.3 arrange for the translation of the regulatory documents where required as part of the Product Registration process;
- 11.2 obtain Regulatory Approval for the Products in any Territory;
- 11.3 complying with all laws and regulations applicable to its business and the purchase of the Products, including (but not limited to) the Data Protection Legislation; and
- 11.4 notify Terumo Aortic of any laws and regulations and changes thereof affecting the purchase of the Products.

17. Data Protection

- 17.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 17 is in addition to, and does not relieve, remove or replace, a Party's obligations

or rights under the Data Protection Legislation

- 17.2 The Customer acknowledges that where it requests and/or receives from Terumo Aortic any personal data relating to Terumo Aortic's employees and/or individual contractors and/or subcontractors and that Terumo Aortic is a data controller in relation to such personal data and shall treat such personal data as confidential information and in accordance with the Data Protection Legislation.

- 17.3 Terumo Aortic will process Customer's personal information in accordance with Terumo Aortic's privacy policy as amended from time to time.

18. Termination

- 18.1 Without limiting its other rights or remedies, Terumo Aortic may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that Party being notified in writing to do so;
 - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a

moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

18.2 Without limiting its other rights or remedies, Terumo Aortic may suspend provision of the Products under the Contract or any other contract between the Customer and Terumo Aortic if the Customer becomes subject to any of the events listed in clause 18.1(b) to clause 18.1(d), or Terumo Aortic reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

18.3 Without limiting its other rights or remedies, Terumo Aortic may terminate the Contract with immediate effect by giving written notice to the Customer if

the Customer fails to pay any amount due under the Contract on the due date for payment.

18.4 On termination of the Contract for any reason the Customer shall immediately pay to Terumo Aortic all of Terumo Aortic's outstanding unpaid invoices and interest and, in respect of Products supplied but for which no invoice has been submitted, Terumo Aortic shall submit an invoice, which shall be payable by the Customer immediately on receipt.

18.5 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

18.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

19. Force majeure

Neither Party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 60 Business Days the

Party not affected may terminate the Contract by giving 10 Business Days' written notice to the affected Party.

20. Anti-Bribery compliance

20.1 The Customer shall:

19.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 and the United States Foreign Corrupt Practices Act ("**Relevant Requirements**");

19.1.2 comply with Terumo Aortic's Ethics Statement, Anti-Slavery and Human Trafficking Statement and/or Code of Conduct as applicable ("**Relevant Policies**");

19.1.3 have and shall maintain in place throughout its own policies and procedures, including adequate procedures under the UK Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and will enforce them where appropriate;

19.1.4 promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received by such Party in connection with the performance of this Contract;

19.1.5 immediately notify the other Party in writing if a foreign public official becomes an officer or employee of the notifying Party or acquires a direct or indirect interest in the notifying Party, and each Party warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement; and

19.1.6 comply with any reasonable request by the other Party to audit such Party's books and records in respect to their compliance with the Relevant Requirements and Relevant Policies.

19.2 Each Party shall be responsible for the observance and performance by any person associated with such Party who is performing services or providing Products in connection with this Contract of the terms set forth in this clause 19 and shall be directly liable to the other Party for any breach by such persons of this clause.

19.3 For the purpose of this clause 19, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the UK Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

21. General

21.1 Assignment and other dealings.

(a) Terumo Aortic may at any time assign, transfer, mortgage, charge, subcontract, delegate, or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Terumo Aortic.

21.2 Confidentiality.

- (a) Each Party undertakes that it shall not at any during the Contract and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted by clause 21.2(b).
- (b) Each Party may disclose the other Party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under the Contract. Each Party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other Party's confidential information comply with this clause 21.2; and
 - (ii) as may be required by law, a court of competent jurisdiction

or any governmental or regulatory authority.

- (c) Neither Party shall use the other Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

21.3 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

21.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21.5 **Waiver.** No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall

constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted and the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision. Any modification to or deletion of a provision or part-provision under this clause 21.6 shall not affect the validity and enforceability of the rest of the Contract.

21.7 **Notices.**

- (a) Any notice given to a Party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or
 - (ii) sent by email to the email address of the relevant Terumo Aortic

representative notified to you.

- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 21.7(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause 21.7 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21.8 **Third Party rights.**

Unless it expressly states otherwise, the Contract does not give rise to any

rights under the Contract (Third-Party Rights) Scotland Act 2017 to enforce any term of the Contract.

19.4 **Counterparts.** This Contract may be executed in counterparts, each of which, when executed and delivered, will be an original, and the counterparts together will constitute one agreement. Any signed counterpart sent by email will constitute an original and will be deemed to be binding when delivered.

21.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the laws of Scotland.

21.10 **Jurisdiction.** Each Party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.